IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1427 OF 1991

1. Eango Panglu Patil of
Abitghar

2. Smt.Gopika Panglya Patil
of Abitghar, Taluka Wada,
District Thane. **..Petitioner**

Vs.

1. Shri.Bhagya Kamulu Patil
of Bavoli, Taluka Wada,
District Thane.

2. The Additional Commissioner,
Konkan Division, Bombay

3. State of Maharashtra **..Respondents**

Mr.V.S.Gokhale for the Petitioners.
None for Respondent No.1.
Mr.A.H.Palekar, A.G.P. for Respondent Nos.2 and 3.

CORAM : DR.S.RADHAKRISHNAN,J.
DATE : 8TH SEPTEMBER, 2006.

ORAL JUDGMENT :-

1. Heard the learned Counsel for the Petitioners and the learned A.G.P. for Respondent Nos.2 and 3. None appears for Respondent No.1, though served. By this Petition, the Petitioners-Landlord are challenging the order dated 13th February, 1991 passed by the Additional Commissioner, Konkan Division, Bombay in suo-motu revision under section 7 of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974. The brief facts are that Respondent No.1 tenant-tribal belonging to "Scheduled Tribe" was held to be a tenant with regard to 6 acres of Varkas land in Survey No.11 and also 2 acres of land out of Survey No.13 of village Bavali, Tq. Wada, District Thane. It appears that on demanding, Agricultural Lands Tribunal, Wada decided tenancy application on the

issue whether Respondent No.1 tenant had exercised his right to purchase the suit land within one year from the date on which the period of termination of tenancy expired under section 31 of the Bombay Tenancy and Agricultural Land Act, 1948. In the said proceedings before the Agricultural Lands Tribunal, after hearing both the Petitioners-Landlord as well as Respondent No.1-tenant, the said Tribunal had clearly given a finding that the Respondent-tribal was not entitled to purchase the said land under section 32F of the Bombay Tenancy and Agricultural Land Act, 1948. It is vital to note that the tribal-tenant did not challenge the said order dated 2nd June, 1969 passed by the Agricultural Lands Tribunal, Tq.Wada, Dist.Thane. Perusal of the said order indicates that the possession of the land was delivered to the Petitioners on 15th March, 1970.

2. Subsequently, the State of Maharashtra had enacted the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 which came into force on 1st November, 1975. In pursuance of the said Act, Respondent No.1 tenant appears to have made an application before the Agricultural Lands Tribunal, Tq.Wada, Dist.Thane for restoration of lands. In the said Application, Respondent No.1 had claimed the following lands at village Bavali, Tq. Wada, Dist.Thane for restoration :-

Survey No.	Area	
	Acre	Guntha
9	3	27
13	3	39
11	8	17
18	3	00

312	5	10
382	7	00
41	2	12

3. It may be noted here that out of the aforesaid lands, vide the order dated 2nd June, 1969, the Agricultural Lands Tribunal held that Respondent No.1 was a tenant with regard to 2 Acres land out of Survey No.11 and 6 Acres of Varkas land out of Survey No.11 which are still in possession of the said tribal and he has been cultivating. In the aforesaid application, the Agricultural Lands Tribunal, Tq.Wada, Dist.Thane raised the issue that the tribal is entitled to get said land. In the said issue the Tribunal had given finding that Respondent No.1 was not entitled to be declared as a tenant under section 32F and 70G of the Bombay Tenancy and Agricultural Lands Act, 1948 except for 2 Acres of Varkas land out of Survey No.13 and 6 Acres of land out of Survey No.11. The Tribunal had also given a finding that Respondent-tenant cannot be a deemed tenant with regard to the rest of the suit lands claimed in the said Application. It was clearly held by the Tribunal that the Respondent-tenant was not entitled to restoration of suit lands as per section 7 of the Maharashtra Restoration of Lands to Schedule Tribes Act, 1974.

4. Thereafter, Respondent No.1 did not pursue and challenge the said order of the Agricultural Lands Tribunal, Wada and accepted the same. However, after lapse of almost 12 years, the Additional Commissioner,

Konkan Division, Bombay exercising his suo-motu revisional power under section 7 of the Maharashtra Restoration of Lands to scheduled Tribes Act, 1974, by his order dated 13th February, 1991 had granted restoration of the aforesaid lands which are originally claimed in the Application under the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974.

5. The learned Counsel for the Petitioners Mr.Gokhale contended that as per section 4 of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974, in case of a tribal, a tribal lands should have been belonging to the said Tribal and either purchased or acquired under the provisions of the Tenancy law. In that behalf it would be relevant to quote section 4 of the Maharasthra of Lands to Scheduled Tribes Act, 1974, which reads as under :-

> "4. Where any land of a Tribal is, at any time on or after the 1st day of April 1957 and before the 6th day of July, 1974, purchased or deemed to have been purchased or acquired under or in accordance with the provisions of the relevant tenancy law by a non-Tribal-transferee or where any acquisition has been regularised on payment of penalty under such law and such land is in possession of a non-Tribal-transferee and has not been put to any non-agricultural use on or before the 6th day of July 1974, then the Collector shall, notwithstanding anything contained in any law for the time being in force, either suo motu at any time or on an application by the Tribal made (within thirty years) from the commencement of this Act and after making such inquiry as he thinks fit, direct that the land shall, subject to the provisions of sub-section (4) of section 3, be restored to the Tribal free from all encumbrances and that the amount of purchase price or a proportionate part thereof, if any, paid by such non-Tribal-transferee in respect of such lands in accordance with the relevant tenancy

> law shall be refunded to such non-Tribal-transferee either in lump sum or in such annual instalments not exceeding twelve (with simple interest at 4 1/2 per cent per annum) as the Collector may direct. The provisions of clauses (d), (e), (f) and (g) of sub-section (4) of section 3 shall, so far as may be, apply in relation to the recovery of the amount from the Tribal and payment thereof to the non-Tribal-transferee and the persons claiming encumbrances, if any:
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> . Provided that, where land is purchased or acquired by a non-Tribal-transferee before the 6th day of July 1974, after such transferee was rendered landless by reason of acquisition of his land for a public purpose, then only half the land so purchased or acquired shall be restored to the Tribal-transferor.

6. Mr.Gokhale the learned Counsel for the Petitioners pointed out the the impugned order, whereby the Additional Commissioner had passed an order of restoration of lands in the said order. Mr.Gokhale also pointed out that the Commissioner, by exercising such power of suo-motu revision could not have questioned the correctness of the order dated 2nd June, 1969 passed by the Agricultural Lands Tribunal clearly holding that Respondent No.1 was not a deemed tenant with regard to the lands mentioned hereinabove except the aforesaid 2 Acres of lands out of Survey No.13 and 6 Acres of Varkas lands out of Survey No.11, which are admittedly in possession of Respondent No.1 and being cultivated by him. The contention of the learned Counsel Mr.Gokhale that the aforesaid order passed by the Agricultural Lands Tribunal dated 2nd June, 1969 is final, in the sense, there was no challenge to the same and after a period of almost 6 years, the Maharashtra Restoration of Lands to

Scheduled Tribes Act, 1974 came into existence at which point of time, Respondent No.1 had purchased or deemed to have purchased the said land with which restoration Application was filed. Therefore, Mr.Gokhale contended that the Commissioner could not have interfered or declared the order of the Agricultural Lands Tribunal dated 2nd June, 1969 to be a nullity. The learned Counsel for the Petitioners, Mr. Gokhale also contended that the Additional Commissioner of Konkan Division, Mumbai had wrongly exercised his jurisdiction in the sense, the Commissioner has no jurisdiction to interfere with the said order. Under these facts and circumstances of the case, the learned Counsel for the Petitioners pointed out that the impugned order passed by the Additional Commissioner, exercising the suo-motu revisional power is totally unsustainable in law.

7. Mr.Palekar, the learned A.G.P. also could not dispute that the order of the Agricultural Lands Tribunal dated 2nd June, 1969 had become final, as the same was never questioned by Respondent No.1-tribal and as such, if that be so, obviously, the learned Additional Commissioner, Konkan Division, Mumbai could not have exercised the power under section 7 of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 and could not have set aside the said order of Agricultural Lands Tribunal dated 2nd June, 1969 as nullity.

8. It is abundantly clear that the Additional Commissioner, Konkan Division, Mumbai by his order dated 13th February, 1991 had wrongly exercised his jurisdiction under section 7 of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 by way of suo-motu revision to set aside the order dated 2nd June, 1969 of the Agricultural Lands Tribunal. If that be so, the order dated 13th February, 1991 passed by the Additional Commissioner, Konkan Division, Mumbai could not be sustained at all. As such, the same is quashed and set aside. Rule is accordingly made absolute.

(DR.S.RADHAKRISHNAN,J.)